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PATENTREMARKS

Claims 2-13, 15, 17-19, 21, 23, and 25 are pending in this application.

Response to Rejection of Claims Under 35 U.S.C. §103Claim 19

Claim 19 is directed generally to a recloseable package which contains individually wrapped feminine care articles that can be carried in the user's purse (or similar portable container) along with other items. The package is large enough to permit easy removal of the feminine care product, but no larger than absolutely necessary so that minimal room is occupied by the package in a purse and the feminine care articles are maintained in an orderly fashion within the package. Moreover, the package is configured so that remaining feminine care articles do not easily fall out or become disorganized after some of the feminine care articles have been removed from the package. In other words, the package is constructed so that it can be substantially conformed to its contents as the volume occupied by the contents is reduced. Thus, the claimed invention provides a substantial benefit for women (e.g., working women) who are away from home for extending periods during the day. The prior art has not contemplated the provision of such a convenient and functional package of feminine care articles.

Specifically, claim 19 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

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a middle portion and a back portion together at least in part forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles, said pocket being of single-piece construction;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive

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closure substantially anywhere on said exterior area of said middle portion of the pocket.

Claim 19 is submitted to be nonobvious and patentable over the references of record, and in particular U.S. Patent No. 3,557,853 (Jones) in combination with U.S. Patent Nos. 5,884,771 (McCormick) and 4,502,599 (Perecman), in that each of the cited references, whether considered alone or in any combination, in that there no suggestion for a package having a pocket and a reclosable adhesive closure positioned on a flap so that the flap is releasably securable by the adhesive closure substantially anywhere on an exterior area of a middle portion of the pocket.

Jones discloses a cloth container (10), such as constructed of cloth or silt (see column 2, lines 60-61), for holding sanitary napkins (21) and having a closure flap (22) to permit access to the interior of the container. Hook and loop type fastener strips (24, 25) are secured to the closure flap (22) and the front panel (12) of the container (10), respectively. The hook and loop type fasteners are used to hold the flap in the closed position by substantially aligning and mating the hook strip (24) with the loop strip (25).

As recognized in the Office action, Jones fails to disclose or otherwise teach a package in which an adhesive closure is used to releasably secure the flap to the front panel. More particularly, with respect to amended claim 19, Jones fails to show or suggest an adhesive closure on the flap or that the flap be releasably securable anywhere on the exterior area of the middle portion of the package as recited in claim 19. Rather, with the hook and loop fasteners disclosed by Jones the flap must be secured to the front panel in the same location (e.g., where the hook fastener engages the

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loop fastener) each and every time the flap is closed. Otherwise, the hook fastener would not engage the loop fastener. Thus, Jones clearly fail to show or even.

As the Office is well aware, obviousness can only be established by modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references or in the knowledge generally available to one of ordinary skill in the art. MPEP § 2143.01 citing *In re Kotzab*, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). The mere fact that a prior art reference may be modified to obtain the claimed invention does not make the claimed invention obvious if there is no suggestion or motivation in the reference to make the modification. *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990).

The Office has previously cited art in this case that disclosed the use of adhesive on a flap but failed to provide any teachings by such art that would motivate one skilled in the art to replace the hook and loop fasteners of Jones with an adhesive strip on the flap. See the final Office action dated July 23, 2004 and applicants Amendment C After Final dated September 22, 2004 which overcame such a position.

In the present action, the Office now instead relies on *Perecman* as teaching a bag 5 having a flap 9 with a strip of pressure-sensitive adhesive 10. *Perecman*, however, is no more relevant than *Joseph et al.* cited previously. That *Perecman* disclose providing adhesive on the flap does not render it obvious to replace the hook and loop fasteners of Jones with adhesive. There must be some motivation provided by the cited art for making the modification. The Office opines that the motivation for replacing the hook and loop fasteners of Jones

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with the adhesive disclosed in Perecman is to provide a package having "a low labor and materials cost to manufacture." Nowhere in the Perecman or the other references of record is it indicated that hook and loop fasteners are more costly than adhesive closures nor does the Office provide any evidence to support such a statement.

Jones indicates that the disclosed bag can be manufactured inexpensively. See column 2, lines 72-74. Even though Perecman teaches using adhesive for securing the flap in its closed position, Perecman provides no teaching that it would be cheaper to use adhesive than hook and loop fasteners. Both Perecman and Jones therefore lack any teaching that would motivate one skilled in the art to replace the hook and loop fasteners on the package of Jones with an adhesive closure on the flap thereof to save money as suggested by the Office.

Furthermore, Jones discloses that the cloth container 10 is constructed from cloth or silk (see column 2, lines 60-61), neither of which provides a good surface for using adhesive material to adhere the flap in its closed position. Rather, cloth materials result in cloth fibers or lint adhering to the adhesive material and reducing its effectiveness. For these additional reasons, one skilled in the art would not be motivated to replace the hook and loop fasteners of Jones with adhesive.

McCormick also fails to provide the required motivation to replace the hook and loop fasteners of Jones with adhesive on the flap. McCormick discloses a kit including an outer pouch 10, a plurality of inner bags 20, cleaning wipes 30, and a storage and disposal pouch 40. The outer pouch 10 is designed to contain the remaining components of the kit along with the supplies used with the kit. The outer pouch 10 includes a

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pocket 12, an opening 13, and a sealing flap 14. The outer pouch 10 could also include a closure 16 on the pocket 12 and closure 18 on the flap 14. McCormick sets forth a list of suitable closures 16 and 18 including a hook and loop type closure, a snap type closure, a clasp type closure or adhesive.

McCormick thus appears to suggest that hook and loop type closures and adhesive are at best interchangeable, i.e., there is no advantage disclosed by McCormick for using adhesive instead of a hook and loop fastener. In this respect, McCormick is also no more relevant than Joseph et al., which was cited by the Office in combination with Jones in the final Office action dated July 23, 2004 and overcome by applicants.

Moreover, McCormick discloses that the pouch is inexpensive to make without distinguishing between the various types of closures. Thus, one of ordinary skill in the art would assume from McCormick that using hook and loop fasteners is no more expensive (or no less expensive) than using adhesive closures since regardless of which closure is used, the bag is inexpensive and disposable. Thus, McCormick does not provide any motivation to one of ordinary skill in the art to replace the hook and loop fastener on Jones with an adhesive closure to make a cheaper bag as suggested by the Office. In fact, McCormick teaches away from such a position.

Since there is no teaching in Perecman or McCormick that would motivate one skilled in the art to modify Jones in the manner asserted by the Office, claim 19 is submitted to be nonobvious and patentable over Jones, Perecman, McCormick, and the other references of record.

Claims 2-13, 15, 17-18, and 25-26, depend directly or indirectly from claim 19 and are submitted to be patentable over the references of record for the same reasons as claim 19.

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These references lack the same motivation when McCormick is considered to be the primary reference in combination with Jones and Perecman. Thus, Claim 21 is submitted as patentable over McCormick in combination with Jones and Perecman.

Claim 21

Claim 21 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a middle portion and a back portion together forming a flexible pocket having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and at least a portion of an exterior area of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from

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passing through the opening, the flap being everywhere free from flush alignment with the pocket in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on said exterior area of the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said exterior area of said middle portion of the pocket.

Claim 21 is submitted to be nonobvious and patentable over the references of record, and in particular 1) Jones in view of McCormick and Perecman, and 2) McCormick in view of Jones, and Perecman, for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

Claim 23

Claim 23 is directed to a package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a flexible pocket comprising at least in part a first wall and having a hollow interior receiving said plural number of absorbent feminine care articles, the hollow interior of the

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pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped feminine care articles to be withdrawn from said hollow interior of the pocket;

a flap attached to the pocket and adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the first wall of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the first wall being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the first wall in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position anywhere on said first portion of the first wall of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure.

Claim 23 is submitted to be nonobvious and patentable over the references of record, and in particular 1) Jones in view of

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McCormick and Perecman, and 2) McCormick in view of Jones, and Perecman, for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

Claim 25

Claim 25 is directed to a package comprising:

A package comprising:

a plural number of individually wrapped absorbent feminine care articles; and

reclosable packaging comprising:

a rectangular sheet having opposing side edges and opposite end edges;

a first fold extending between the side edges of the sheet to define a bottom of the packaging, the first fold separating a middle portion of the packaging from a back portion of the packaging, the middle and back portions of the packaging being sealingly joined along overlapping side edges to define a flexible pocket;

the pocket having a hollow interior for receiving said plural number of absorbent feminine care articles, the hollow interior of the pocket having a volume which is substantially filled by the plural number of individually wrapped feminine care articles so that the pocket conforms to the articles;

an opening extending into the hollow interior of the pocket, said opening being sized and shaped for permitting at least one of said plural number of individually wrapped

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feminine care articles to be withdrawn from said hollow interior of the pocket;

a second fold extending between the side edges of the sheet generally parallel to and above the first fold to define a top of the packaging, the second fold separating the back portion of the packaging from a front portion of the packaging, the front portion of the packaging defining a flap;

the flap being adapted for covering the opening to retain said plural number of individually wrapped feminine care articles in the hollow interior of the pocket, said flap being selectably moveable between an open position in which the opening is generally unobstructed by said flap to permit said article to be withdrawn through the opening and a closed position in which the flap covers the opening and a first portion of the middle portion of the pocket to retain said plural number of articles in the pocket and to prevent said plural number of articles from passing through the opening, a second portion of the middle portion being uncovered by the flap in the closed position of the flap, the flap being free from flush alignment with said uncovered second portion of the middle portion in the closed position of said flap; and

a reclosable adhesive closure comprising an adhesive material positioned on said flap for releasably securing the flap in its closed position on the middle portion of the pocket, the adhesive closure being spaced from a distal edge of the flap to permit a portion of the flap to be grasped and separated from the pocket without releasing the closure, said flap being releasably securable by said adhesive closure substantially anywhere on said first portion of said middle portion of the pocket.

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Claim 25 is submitted to be nonobvious and patentable over the references of record, and in particular 1) Jones in view of McCormick and Perecman, and 2) McCormick in view of Jones, and Perecman, for substantially the same reasons as claim 19. That is, whether considered alone or in combination the references there is no suggestion or motivation in any of these references for a package having a flap and a flexible pocket arranged and configured such that an adhesive closure is provided on the flap and the flap is releasably securable anywhere on the exterior area of the middle portion of the package.

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CONCLUSION

In view of the foregoing, favorable consideration of claims 2-13, 15, 17-19, 21, 23, and 25 is respectively requested.

Respectfully submitted,



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